

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

MARWIN MILLER et al.,	§	
Plaintiffs,	§	
	§	
	§	
v.	§	3:15-CV-00043-M-BK
	§	
MICHEAL MILLER et al.,	§	
Defendants.	§	
	§	

ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

The United States Magistrate Judge made Findings, Conclusions, and a Recommendation in this case. Plaintiff Marwin Miller ("Mr. Miller"), a *pro se* litigant, did not file objections, but on February 6, 2015, filed an amended complaint along with a second motion for injunction, reiterating his claims and again naming as a plaintiff Rose A. Miller ("Mrs. Miller"), also a *pro se* litigant. Mrs. Miller is in the custody of Adult Protective Services and has been appointed a permanent guardian.

In January 2015, the Magistrate Judge advised Mr. Miller that as a *pro se* litigant he could not represent Mrs. Miller and that he needed to hire an attorney within twenty-one days or her claims would be dismissed. [Doc. 7]. On January 16, 2015, in response to the Court's deficiency order, Mr. Miller filed an amended complaint, naming himself as the sole plaintiff in this action and the Magistrate Judge recommended that Mrs. Miller be terminated as a plaintiff in the case. [Doc. 9 at 1]. The second amended complaint appears to name Mrs. Miller as a plaintiff in contravention of FED. R. CIV. P. 11(a) and the Court's prior order. [Doc. 15 at 1]. Accordingly, Rose A. Miller is **DISMISSED** without prejudice as a Plaintiff in this case.

Additionally, to the extent Mr. Miller seeks to object to the findings, conclusions, and recommendation of the Magistrate Judge, the District Court has made a *de novo* review of those portions of the proposed findings and recommendation to which objection was made. The objections are overruled, and the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

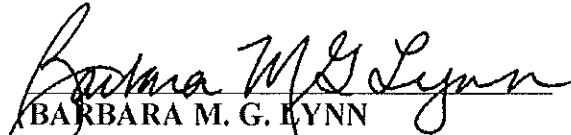
IT IS THEREFORE ORDERED that this action is **DISMISSED** *sua sponte* without prejudice for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(3). Plaintiff's renewed motion for injunction [Doc. 16] is **DENIED** for the reason stated in the January 21, 2015 order. [Doc. 13].

The Court prospectively **CERTIFIES** that any appeal of this action would not be taken in good faith. *See* 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). In support of this certification, the Court adopts and incorporates by reference the Magistrate Judge's Findings, Conclusions, and Recommendation. *See Baugh v. Taylor*, 117 F.3d 197, 202 and n.21 (5th Cir. 1997). Based on the Findings and Recommendation, the Court finds that any appeal of this action would present no legal point of arguable merit and would, therefore, be frivolous. *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983).¹ In the event of an appeal, Plaintiff may challenge this certification by filing a separate motion to proceed *in forma pauperis* on appeal

¹ Federal Rule of Appellate Procedure 4(a) governs the time to appeal an order. A timely notice of appeal must be filed even if the district court certifies an appeal as not taken in good faith.

with the Clerk of the Court, U.S. Court of Appeals for the Fifth Circuit. See Baugh, 117 F.3d at 202; FED. R. APP. P. 24(a)(5).

SO ORDERED this 23 day of February, 2015.


BARBARA M. G. LYNN
UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF TEXAS